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Anderson Gorecki & Manaras LLP
33 NAGOG PARK
ACTON, MA 01720

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FLOYD BACKES, GARY VACON, PAUL CALLAHAN, WILLIAM HAWE, and ROGER DURAND

Appeal 2009-010879
Application 10/781,204[1]
Technology Center 2600

Before MARC S. HOFF, ELENI MANTIS MERCADER, and CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1 and 2.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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[1] The real party in interest is Autocell Laboratories, Inc.
[2] Claims 3-5 stand withdrawn from consideration as directed to a non-elected invention.

Appellants' invention concerns management of a wireless network having multiple access points (APs), including multiple APs operating on the same channel. An AP's transmission power is automatically adjusted to avoid interference with the closest AP on the same channel while ensuring coverage for the farthest mobile station (STA) (Abstract; Spec. 37).

Claim 1 is exemplary of the claims on appeal:

1. Apparatus for adjusting transmission power of a first fixed location device capable of communicating with a plurality of mobile devices associated with the first fixed location device in a wireless communications environment via a radio frequency channel of which a first mobile device is the furthest mobile device from the first fixed location device, comprising:

logic for detecting that a second fixed location device is also using the radio frequency channel as the first fixed location device, and that the second fixed location device is nearer to the first fixed location device than any other fixed location device operating on the radio frequency;

logic for ascertaining whether the second fixed location device is nearer to the first fixed location device than the first mobile device; and

logic for adjusting transmit power such that:

if the second fixed location device is nearer to the first fixed location device than the first mobile device, transmit power is set based on distance to the first mobile device; and

if the second fixed location device is not nearer to the first fixed location device than the first mobile device, transmit power is set based on distance to the second fixed location device.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Ida	US 7,136,665 B2	Nov. 14, 2006 (filed Oct. 5, 2001)

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ida.

Throughout this decision, we make reference to the Appeal Brief ("App. Br.," filed Jan. 12, 2009), the Reply Brief ("Reply Br.," filed Jan. 12, 2009), and the Examiner's Answer ("Ans.," mailed Jun. 14, 2007) for their respective details.

ISSUE

Appellants argue that the Examiner erred in finding that Ida anticipates the claimed invention, because Ida does not teach conditionally setting the transmit power level of the base station ("second fixed location device") based on either the distance to the first mobile device or the distance to the first fixed location device (App. Br. 5).

Appellants' contentions present us with the following issue:

Does Ida teach ascertaining whether the second fixed location device is nearer to the first fixed location device than the first mobile device, and if so, transmit power is set based on distance to the first mobile device, whereas if not, transmit power is set based on distance to the second fixed location device?

FINDINGS OF FACT

Ida

1. Ida teaches switching from one base transceiver station 2 to another as mobile station 3 changes its location. This switching is mainly determined by the base transceiver station host equipment 4 in accordance with the magnitude of the levels of reception of the signals from the base transceiver stations 2 at the mobile station 3 (col. 5, ll. 16-28).

2. Ida teaches that base transceiver station location information generating means 12 generates information indicating the present location of at least one base transceiver station adjoining [a given] base transceiver station. Base transceiver station specifying means 13 specifies the one base transceiver station 2 nearest to the mobile station from the . . . mobile station location information and base transceiver station location information (col. 6, ll. 26-36).

3. Ida's transmission power control means 14 controls the transmission power to raise the transmission power in the specified base transceiver station 2. Note that control is performed so as not to raise the transmission power in all of the base transceiver station [sic] (col. 6, ll. 36-43).

PRINCIPLES OF LAW

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *See In re Buszard,* 504 F.3d 1364, 1366 (Fed. Cir. 2007)

(quoting *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)). Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

ANALYSIS

Independent claim 1 recites an apparatus for adjusting transmission power of a first fixed location device [i.e., wireless base station], comprising logic for ascertaining whether the second fixed location device is nearer to the first fixed location device than the first mobile device, and if so, transmit power is set based on [the] distance to the first mobile device, whereas if the second fixed location device is *not* nearer to the first fixed location device than the first mobile device, transmit power is set based on [the] distance to the second fixed location device.

The Examiner finds that Ida teaches setting transmission power "based on the distance between the adjoining base transceiver stations" (Ans. 5). The Examiner further finds that because Ida teaches raising transmission power to communicate with the mobile station (Ans. 5), Ida meets the claim limitation that 'transmit power is set based on distance to the first mobile device' (Ans. 5). According to the Examiner, because transmission power is not raised for the other adjoining base transceiver stations, Ida teaches "transmit power is set based on distance to the second fixed location device" (Ans. 6).

We disagree with the Examiner's finding of anticipation. The disclosed and claimed invention is concerned with avoiding "interference with the closest AP [access point] while ensuring coverage for the farthest STA [mobile station]" (Spec. 37). Independent claim 1 calls for an AP to reduce transmit power if it determines the farthest STA to be closer than the closest AP (see Fig. 17, step 268; Spec. 33), whereas the AP's transmit power will be set relatively higher if the farthest STA is farther away than the closest AP (see Fig. 17, step 270; Spec. 33). The Examiner has not identified any teaching in Ida of any determination whether the second fixed location is nearer to the first fixed location device than the first mobile device, as independent claim 1 requires. Ida merely teaches determining which wireless base transceiver station 2 (Fig. 16) is closest to mobile station 3 (FF 1, 2), and raising the transmission power in the specified base transceiver station (FF 3).

Because Ida does not teach all of the limitations of independent claim 1, we find that the Examiner erred in rejecting claims 1 and 2 under § 102. We will not sustain the Examiner's rejection.

CONCLUSION

Ida does not teach ascertaining whether the second fixed location device is nearer to the first fixed location device than the first mobile device, and if so, transmit power is set based on distance to the first mobile device, whereas if not, transmit power is set based on distance to the second fixed location device.

ORDER

The Examiner's rejection of claims 1 and 2 is reversed.

REVERSED

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